

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CHARLES A. CORREIA, et al.

Plaintiffs,

v.

Civil Action No. 05-11494

ADESA IMPACT¹,

Defendant.

ANSWER OF DEFENDANT ADESA IMPACT

Defendant ADESA Impact states its Answer to the Complaint filed by Charles A. Correia, et al. as follows:

FIRST DEFENSE

Subject to the subsequent affirmative defenses and without waiving the same, ADESA Impact responds to the like-numbered paragraphs of Plaintiffs' Complaint as follows:

The introductory paragraph contained on page two of the Complaint, entitled "Complaint and Demand for Jury Trial," is not intended to allege facts, but merely to identify Plaintiffs and their counsel, and therefore requires no response.

I. PARTIES

1. ADESA Impact lacks knowledge or information sufficient to form a belief as to the truth of the allegations set for in Paragraph 1 of the Complaint.

¹ Plaintiffs have misnamed Defendant in their Complaint. Defendant's true name is Automotive Recovery Services, Inc. d/b/a ADESA Impact.
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- 1A. – 1I. ADESA Impact lacks knowledge or information sufficient to form a belief as to the truth of the allegations set for in Paragraphs 1A – 1I of the Complaint.
2. ADESA Impact states that it is a duly organized corporation under the laws of the State of Indiana and that its principal place of business is located at 13085 Hamilton Crossing Blvd., Carmel, Indiana.
3. Paragraph 3 of the Complaint contains no factual allegations, and therefore no response is required. To the extent a response is required, ADESA Impact incorporates by reference its responses to all preceding and subsequent paragraphs of the Complaint as if set forth fully herein.

II. BACKGROUND

4. Paragraph 4 of the Complaint contains no factual allegations, and therefore no response is required. To the extent a response is required, ADESA Impact incorporates by reference its responses to all preceding and subsequent paragraphs of the Complaint as if set forth fully herein.
5. ADESA Impact states that it owns and operates a facility at which insurance companies consign vehicles and where wholesale dealer automobile auctions occur. ADESA Impact admits that the vehicles are received, catalogued, and stored in order to recover salvage value for insurance companies.
6. ADESA Impact admits that the ADESA Impact office building and garage referenced in Paragraph 6 of the Complaint occupy approximately 7,500 square feet of the thirty acre ADESA Impact property. ADESA Impact states that one outdoor 1,000 gallon diesel fuel transfer tank exists at the facility and is located approximately 300 feet northwest of the

office building. ADESA Impact states that a former 200 gallon fuel transfer tank was located approximately 1,000 feet north of the building and was removed in February 2004. ADESA Impact admits that the ADESA Impact property has frontage on Myricks Street and is just north of the town of Lakeville border. ADESA Impact lacks knowledge or information sufficient to form a belief as to the truth of the allegation set forth in the last sentence of Paragraph 6 of the Complaint.

7. ADESA Impact lacks knowledge or information sufficient to form a belief as to the truth of the allegation set forth in the first sentence of Paragraph 7 of the Complaint. ADESA Impact denies all of the allegations and assertions set forth in the second sentence of Paragraph 7 of the Complaint.
8. ADESA Impact admits that MADEP assigned the ADESA disposal site with case number RTN4-18119.
9. ADESA Impact admits that on December 8, 2003 a notice of responsibility letter was sent to ADESA.
10. ADESA Impact denies all of the allegations and assertions set forth in Paragraph 10 of the Complaint.
11. ADESA Impact admits that it retained GeoInsights, Inc., 25 Sundial Avenue, Suite 515 West, Manchester, New Hampshire 03103.
12. ADESA Impact denies all of the allegations and assertions set forth in Paragraph 12 of the Complaint.

13. ADESA Impact lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 13 of the Complaint.
14. ADESA Impact admits the allegations set forth in Paragraph 14 of the Complaint.
15. ADESA Impact denies all of the allegations and assertions set forth in Paragraph 15 of the Complaint.
16. ADESA Impact denies all of the allegations and assertions set forth in Paragraph 16 of the Complaint.

What is MTBE?

17. ADESA Impact lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 17 of the Complaint.
18. ADESA Impact lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 18 of the Complaint.
19. ADESA Impact lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 19 of the Complaint.
20. ADESA Impact lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 20 of the Complaint.
21. ADESA Impact lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 21 of the Complaint.
22. ADESA Impact lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 22 of the Complaint.

23. ADESA Impact lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 23 of the Complaint.

III. NEGLIGENCE

24. Paragraph 24 of the Complaint contains no factual allegations, and therefore no response is required. To the extent a response may be required, ADESA Impact incorporates by reference its responses to all preceding and subsequent paragraphs of the Complaint as if set forth fully herein.
25. ADESA Impact denies all of the allegations and assertions set forth in Paragraph 25 of the Complaint.
26. ADESA Impact denies all of the allegations and assertions set forth in Paragraph 26 of the Complaint.
27. ADESA Impact denies all of the allegations and assertions set forth in Paragraph 27 of the Complaint.
28. ADESA Impact denies all of the allegations and assertions set forth in Paragraph 28 of the Complaint.
29. Plaintiffs neglected to include Paragraph 29 in their Complaint.
30. ADESA Impact denies all of the allegations and assertions set forth in Paragraph 30 of the Complaint.
31. ADESA Impact denies all of the allegations and assertions set forth in Paragraph 31 of the Complaint.

32. ADESA Impact denies all of the allegations and assertions set forth in Paragraph 32 of the Complaint.
33. ADESA Impact denies all of the allegations and assertions set forth in Paragraph 33 of the Complaint.
34. ADESA Impact denies all of the allegations and assertions set forth in Paragraph 34 of the Complaint.
35. ADESA Impact denies all of the allegations and assertions set forth in Paragraph 35 of the Complaint.
36. ADESA Impact denies all of the allegations and assertions set forth in Paragraph 36 of the Complaint.
37. ADESA Impact denies all of the allegations and assertions set forth in Paragraph 37 of the Complaint.
38. ADESA Impact denies all of the allegations and assertions set forth in Paragraph 38 of the Complaint.
39. ADESA Impact denies all of the allegations and assertions set forth in Paragraph 39 of the Complaint.

NEGLIGENCE

DUTY TO PREVENT AND WARN

IV. DUTY TO PREVENT

40. Paragraph 40 of the Complaint contains no factual allegations, and therefore no response is required. To the extent a response may be required, ADESA Impact incorporates by

reference its responses to all preceding and subsequent paragraphs of the Complaint as if set forth fully herein.

41. ADESA Impact denies all of the allegations and assertions set forth in Paragraph 41 of the Complaint.

42. ADESA Impact denies all of the allegations and assertions set forth in Paragraph 42 of the Complaint.

43. ADESA Impact denies all of the allegations and assertions set forth in Paragraph 43 of the Complaint.

44. ADESA Impact denies all of the allegations and assertions set forth in Paragraph 44 of the Complaint.

45. ADESA Impact denies all of the allegations and assertions set forth in Paragraph 45 of the Complaint.

V. DUTY TO WARN

46. Paragraph 46 of the Complaint contains no factual allegations, and therefore no response is required. To the extent a response may be required, ADESA Impact incorporates by reference its responses to all preceding and subsequent paragraphs of the Complaint as if set forth fully herein.

47. ADESA Impact denies all of the allegations and assertions set forth in Paragraph 47 of the Complaint.

48. ADESA Impact denies all of the allegations and assertions set forth in Paragraph 48 of the Complaint.

49. ADESA Impact denies all of the allegations and assertions set forth in Paragraph 49 of the Complaint.

50. ADESA Impact denies all of the allegations and assertions set forth in Paragraph 50 of the Complaint.

VI. DUTY TO REMEDIATE

51. Paragraph 51 of the Complaint contains no factual allegations, and therefore no response is required. To the extent a response may be required, ADESA Impact incorporates by reference its responses to all preceding and subsequent paragraphs of the Complaint as if set forth fully herein.

52. ADESA Impact denies all of the allegations and assertions set forth in Paragraph 52 of the Complaint.

53. ADESA Impact denies all of the allegations and assertions set forth in Paragraph 53 of the Complaint.

54. ADESA Impact denies all of the allegations and assertions set forth in Paragraph 54 of the Complaint.

55. ADESA Impact denies all of the allegations and assertions set forth in Paragraph 55 of the Complaint.

56. ADESA Impact denies all of the allegations and assertions set forth in Paragraph 56 of the Complaint.

57. ADESA Impact denies all of the allegations and assertions set forth in Paragraph 57 of the Complaint.

58. ADESA Impact denies all of the allegations and assertions set forth in Paragraph 58 of the Complaint.

59. ADESA Impact denies all of the allegations and assertions set forth in Paragraph 59 of the Complaint.

60. ADESA Impact denies all of the allegations and assertions set forth in Paragraph 60 of the Complaint.

VII. ABNORMALLY DANGEROUS ACTIVITY ABSOLUTE OR STRICT LIABILITY

61. Paragraph 61 of the Complaint contains no factual allegations, and therefore no response is required. To the extent a response may be required, ADESA Impact incorporates by reference its responses to all preceding and subsequent paragraphs of the Complaint as if set forth fully herein.

62. ADESA Impact denies all of the allegations and assertions set forth in Paragraph 62 of the Complaint.

63. ADESA Impact denies all of the allegations and assertions set forth in Paragraph 63 of the Complaint.

64. ADESA Impact denies all of the allegations and assertions set forth in Paragraph 64 of the Complaint.

65. ADESA Impact denies all of the allegations and assertions set forth in Paragraph 65 of the Complaint.

66. ADESA Impact denies all of the allegations and assertions set forth in Paragraph 66 of the Complaint.

67. ADESA Impact denies all of the allegations and assertions set forth in Paragraph 67 of the Complaint.

68. ADESA Impact denies all of the allegations and assertions set forth in Paragraph 68 of the Complaint.

VIII. PRIVATE NUISANCE

69. Paragraph 69 of the Complaint contains no factual allegations, and therefore no response is required. To the extent a response may be required, ADESA Impact incorporates by reference its responses to all preceding and subsequent paragraphs of the Complaint as if set forth fully herein.

70. ADESA Impact denies all of the allegations and assertions set forth in Paragraph 70 of the Complaint.

71. ADESA Impact denies all of the allegations and assertions set forth in Paragraph 71 of the Complaint.

72. ADESA Impact denies all of the allegations and assertions set forth in Paragraph 72 of the Complaint.

73. ADESA Impact denies all of the allegations and assertions set forth in Paragraph 73 of the Complaint.

74. ADESA Impact denies all of the allegations and assertions set forth in Paragraph 74 of the Complaint.

75. ADESA Impact denies all of the allegations and assertions set forth in Paragraph 75 of the Complaint.

76. ADESA Impact denies all of the allegations and assertions set forth in Paragraph 76 of the Complaint.

77. ADESA Impact denies all of the allegations and assertions set forth in Paragraph 77 of the Complaint.

IX. TRESPASS

78. Paragraph 78 of the Complaint contains no factual allegations, and therefore no response is required. To the extent a response may be required, ADESA Impact incorporates by reference its responses to all preceding and subsequent paragraphs of the Complaint as if set forth fully herein.

79. ADESA Impact denies all of the allegations and assertions set forth in Paragraph 79 of the Complaint.

80. ADESA Impact denies all of the allegations and assertions set forth in Paragraph 80 of the Complaint.

81. ADESA Impact denies all of the allegations and assertions set forth in Paragraph 81 of the Complaint.

82. ADESA Impact denies all of the allegations and assertions set forth in Paragraph 82 of the Complaint.

83. ADESA Impact denies all of the allegations and assertions set forth in Paragraph 83 of the Complaint.

84. ADESA Impact denies all of the allegations and assertions set forth in Paragraph 84 of the Complaint.

85. ADESA Impact denies all of the allegations and assertions set forth in Paragraph 85 of the Complaint.

86. ADESA Impact denies all of the allegations and assertions set forth in Paragraph 86 of the Complaint.

X. PUBLIC NUISANCE

87. Paragraph 87 of the Complaint contains no factual allegations, and therefore no response is required. To the extent a response may be required, ADESA Impact incorporates by reference its responses to all preceding and subsequent paragraphs of the Complaint as if set forth fully herein.

88. ADESA Impact denies all of the allegations and assertions set forth in Paragraph 88 of the Complaint.

89. ADESA Impact denies all of the allegations and assertions set forth in Paragraph 89 of the Complaint.

90. ADESA Impact denies all of the allegations and assertions set forth in Paragraph 90 of the Complaint.

91. ADESA Impact denies all of the allegations and assertions set forth in Paragraph 91 of the Complaint.

Prayer For Relief

The Prayer for Relief set forth in the Complaint contains no factual allegations, and therefore no response is required. To the extent a response may be required, ADESA Impact incorporates by

reference its responses to all preceding and subsequent paragraphs of the Complaint as if set forth fully herein.

SECOND DEFENSE

Plaintiffs' Complaint fails to state a claim upon which relief can be granted.

THIRD DEFENSE

Plaintiffs are barred from seeking the relief requested by the applicable statute of limitations.

FOURTH DEFENSE

Plaintiffs are barred from seeking the relief requested by the doctrine of laches.

FIFTH DEFENSE

Plaintiffs are barred from seeking the relief requested by the doctrine of assumption of risk. At the time Plaintiffs purchased their property, Plaintiffs knew or should have known that their property is located adjacent to a commercial site that has been used as an auto salvage yard since the 1960s, and certain Plaintiffs knew of groundwater contamination before purchasing their property.

SIXTH DEFENSE

Plaintiffs' claims should be severed as Plaintiffs are not similarly situated and therefore not properly joined as parties to this action. Plaintiffs purchased their property at different times, under different circumstances, and with varying degrees of knowledge about the water associated with their property and surrounding properties. Furthermore, impacts, if any, to Plaintiffs' property vary. As such, questions of law and fact are not common to all Plaintiffs and Plaintiffs have been misjoined in this action.

SEVENTH DEFENSE

Plaintiffs' claims should be dismissed because ADESA Impact does not owe Plaintiffs a specific duty of care.

EIGHTH DEFENSE

Plaintiffs' claims should be dismissed because all of the alleged damage to their property has been remediated.

NINTH DEFENSE

Plaintiffs' claims should be dismissed because Plaintiffs cannot assert claims for stigma damages. All of the alleged damage to Plaintiffs' property has been remediated and therefore Plaintiffs cannot bring a cause of action based on stigma damages.

TENTH DEFENSE

Plaintiffs' claims should be dismissed because ADESA Impact is not liable for activities occurring on or off its property before it acquired the property.

ELEVENTH DEFENSE

Plaintiffs' claims should be dismissed because Plaintiffs have failed to mitigate their alleged damages. Although ADESA Impact is not liable for any of the alleged damages to Plaintiffs' property, it has nevertheless taken remedial action to benefit Plaintiffs' property, including, but not limited to, offering to provide each Plaintiff with a water line to connect with the City of Taunton's water supply. Despite this offer, Plaintiffs have failed to avail themselves of this opportunity and continue to use the same water source that they claim is contaminated.

ADESA Impact,

By its attorneys,

s/Paul B. Galvani

Paul B. Galvani (BBO #183800)

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